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VIA ECF

Hon. Lewis A. Kaplan
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Daniel Kleeberg, Lisa Stein and Audrey Hays v. Estate of Lester Eber, et al.*
Civ. Action No.: 16-cv-09517-LAK-KHP

Dear Judge Kaplan,

I am responding to the April 30, 2021, letter filed by Plaintiffs' counsel, Brian Brook, Esq. His letter purports to request an expedited scheduling of a trial in this matter, and improperly seeks to relitigate issues raised and already decided by Judge Parker in her original and reconsideration summary judgment decisions.

Judge Parker, after twice looking at Plaintiffs' request for imposition of a constructive trust, declined to grant this remedy. Rather, she found significant intertwined issues of fact bearing on, among many other things, whether Lester Eber was unjustly enriched when, in 2012, he accepted a transfer, in full compliance with UCC sec. 9-620, of all the stock of an insolvent holding company then owning the Ebers' Connecticut operating entity, Eber-CT, in satisfaction of millions of dollars of secured loans made by Mr. Eber to the holding companies (as well as millions more of loans and other financial accommodations made by him thereafter), all to save the Eber business from collapse.

Mr. Brook's letter also complains about the propriety of certain of Wendy Eber's actions on behalf of the whole group of Eber companies. These allegations are either intentionally false and materially misleading, or reflective of a lack of understanding of corporate finance and corporate law.

Mr. Brook is apparently of the mistaken belief that, if successful, his clients are entitled to a direct equity interest in Eber-CT. However, even if plaintiffs prevail in gaining equitable relief, they would only have a direct equity interest in Eber Bros. & Co., Inc. ("Eber Bros."), a dormant holding company three layers above Eber-CT. Also, since Plaintiffs' claim is derivative, if



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Plaintiffs were to be awarded damages, they would be payable to Eber Bros. Wine and Liquor Corp. ("Eber W&L"), a dormant holding company subsidiary of Eber Bros. Critically, Eber W&L is heavily indebted to the Estate of Lester Eber. Mr. Brook wants to ignore those debts, but they would need to be repaid in full before Plaintiffs could get the benefit of any direct interest in Eber-CT or receive any damages.

Put simply, all the actions complained about by Mr. Brook were undertaken for valid corporate reasons and were in the best interests of the Eber companies. Further, Wendy Eber is the President of Eber-CT — and intends to remain so. The company is not for sale.

Eber-CT is a typical multi-generational small privately owned company. The predecessor to the current business was founded in 1917. In 1960, Allen Eber brought his son Lester into the company and challenged him to learn the business. Lester went on to successfully run the business for over 45 years. Similarly, Lester brought Wendy into the family business in 2001, and challenged her to learn the business in the same way that he had. It has long been the expectation that Wendy would take over the running of the business one day. She was intimately involved in successfully dealing with the crisis that developed in 2007 when their now defunct New York business collapsed, she jointly managed Eber-CT since 2007, and she has been President for over eight years.

The COVID-19 pandemic has been a challenge for all businesses, but Eber-CT is stable, and operating as normally as could be expected under the current circumstances. Lester Eber's 2020 death came sooner than expected. However, the Ebers' long term succession plan is working as intended. Wendy Eber intends to continue as President and has communicated her plans for the future to the company's employees, major suppliers, and to its lenders — and has their support. Judge Parker's decision recognized that maintaining Eber-CT's corporate structure and management during the pendency of the litigation is vital to the company's stability and wellbeing.

I look forward to discussing this matter with the Court at our upcoming pre-trial conference on May 18, 2021.

Respectfully submitted,

Colin D. Ramsey

CDR:afh

cc: Brian C. Brook, Esq. (via ECF)